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EXAMINER

ZURITA, JAMES II

ART UNIT

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3625

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/757,432

Applicant(s)

SEIDMAN ET AL.

Examiner

JAMES ZURITA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant submissions of 28 February 2008 have been entered.

Claims 28-52 are pending and will be examined.

Pro se Applicant

While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed.

Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450.

Abstract

Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof

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are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

(1) if a machine or apparatus, its organization and operation;

(2) if an article, its method of making;

(3) if a chemical compound, its identity and use; (4) if a mixture, its ingredients; (5) if a process, the steps.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The Abstract appears to be a repetition of claim 1 and paragraph 7. Please refer to 37 CFR 1.172 and to MPEP 608.

Appropriate correction is required.

Claim Objections

Claim 28 is objected to because of the following informalities:

Claim 28 ends with a semicolon and should end with a period. See MPEP 608.01(m) for formats.

Please review for similar errors. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 42 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 42 refers to rating a seller, without human intervention, at the highest rating when the transaction is for an electronic good that was stored in the Electronic goods Database. The limitation is mentioned in original claim 15 but is not described.

Claims 28-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 28-52 recite intended use of the apparatus. Applicant admits that Gupta discloses much similar infrastructure as his own claimed invention. Apparatus claims must be structurally distinguishable from prior art, as per MPEP 2111. As before, prior art will be interpreted to read on applicant's claimed apparatus and parts where prior art discloses apparatus that are reasonable capable of performing the various functions. The various labels do not provide patentable distinction.

Claims 28, 32, 36, 37, 48 and 50 contain the conditional OR; Claim 44 contains the term and/or. These terms render the claims indefinite. Prior Art will be interpreted to meet the limitation where prior art meets either condition.

Claim 33 contains the term because and it is not possible to determine the metes and bounds of the claim. There is no mention of "...becoming ...downloadable..." in the specification.

Claim 28 refers to various databases. A database is any aggregation of data. Microsoft Press Computer Dictionary. A database is a file composed of records, each containing fields together with a set of operations for searching, sorting, recombining and other functions. For purposes of this examination, the term database will be given its broadest reasonable interpretation to include logical and physical aggregations of data.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 28-52, as interpreted, are rejected under 35 U.S.C. 103(a) as being unpatentable over Gupta (US 7,130,815).

As per Claim 28, Gupta discloses apparatus that

Registers users with an auction website and establish pertinent personal account information, wherein registering causes a user account to be created and stored in a User Accounts table (in Auction Database) with a unique user ID, and the user IDs are employed by users when buying and selling; See at least Col. 6, lines 14-25.

allows sellers to post information about a good as well as set the quantity and the asking price for the good; see, for example, at least Col. 1, lines 26-35 and references to defined products;

a Bid Creator with User interface for purchasing bidders that allows purchasing bidders to set a price for a bid on an item which may be at the seller's asking price OR be a short-bid which is less than the seller's asking price and which becomes a contract to buy once submitted; and which becomes a contract to buy once submitted (see, for example, at least Col. 5, lines 57-67, Col. 7, lines 1- 20);

a Bid Reviewer User interface for sellers that provides the list of short-bid contracts for the seller to review; see, for example, Abstract, Col. 3, lines 4-19;

a Bid Manager that executes a sale if a bid is at the asking price posted for a good, while it collects and tracks all short-bids as bid contracts no matter how low the price bid is; (see at least Col. 3, lines 20-33 and other references to consummating an accepted offer);

a Sale Executor that executes a sale between purchasing bidder and seller when a bid is placed at the asking price OR when the seller decides to accept a short-bid, wherein executing a sale comprises notification to purchasing bidder and seller that the purchasing bidder's submittal of a contract to buy must be executed. See at least Col. 2, lines 9-19;

an Email Notifier that sends emails to sellers and purchasing bidders constituting the notifications generated. See, for example, at least Col. 6, lines 54-67.

an Auction Database that stores the User Accounts, current Auction Items, current Bids, Auction History, and Bid History. See, for example, at least Col. 10, line 10-Col. 11, line 35.

an Auction Item Manager that stores the properties of an auction in the Auction Items Table in the Auction Database when the Auction Creator creates an auction for the item. See, for example, at least Col. 10, line 10-Col. 11, line 35.

As per Claim 29, Gupta discloses sending out email to sellers and purchasing bidders when a sale is executed (least Col. 6, lines 54-67). As per claim 29, Gupta **does not** specifically disclose [sending out email] to just a seller when a new bid has been offered. It would have been obvious to one of ordinary skill at the time the invention was made to limit email notification to] to just a seller when a new bid has been offered, because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 30 Gupta discloses managing collection of funds from a purchasing bidder's account which [funds] is then deposited into a seller's account. See at least Col. 10, line 24-Co1. 11, line 24.

As per claim 31 Gupta discloses providing for sellers to create an auction on a specific good to last for a specific time interval. See Col. 2, line 54-Col. 3, line 3.

As per claim 32 Gupta discloses providing for sellers to create an auction on a specific good to last Until [executing] a transaction to sell the last item available OR until the seller decides to prematurely terminate the auction. See, for example, at least Col. 8, lines 7-16.

As per claim 33 Gupta discloses providing for sellers to create an auction on a specific electronic good with an infinite quantity. See, for example, at least references to auctions of paid context as in advertisements, as in Col. 11, lines 1-29. As per claim 33, Gupta **does not** specifically disclose providing for sellers to create an auction on a specific electronic good with an infinite quantity because the item becomes electronically downloadable for the purchasing bidder after a successfully executed sale. It would have been obvious to extend Gupta to disclose providing for sellers to create an auction on a specific electronic good with an infinite quantity because the item becomes electronically downloadable for the purchasing bidder after a successfully executed sale because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 34 Gupta discloses providing for sellers to create an auction without a specific asking price, wherein potentially purchasing bidders may offer bids that may only be accepted later via the seller's employment of the Bid Manager. See at least Col. 7, lines 1-20.

As per claim 35 Gupta discloses providing for sellers to create an auction on a specific electronic good which becomes electronically downloadable from a specific location on the web for the purchasing bidder after a successfully executed sale. See, for example, at least references to auctions of paid context as in advertisements, as in Col. 11, lines 1-29.

As per claim 36 Gupta discloses allowing sellers to modify asking price OR to terminate an auction. See, for example, references to acceptable price, as in Fig. 3B.

As per claim 37 Gupta discloses the ability to modify any existing auction properties. See, for example, acceptable price, as in Fig. 3B. As per claim 37 Gupta **does not** specifically disclose ability to modify any existing auction properties so that when, and only when, the asking price is lowered, the Auction Editor will invoke the Sale Executor for all short-bids that become equal OR greater than the new lowered modified asking price, which results in the Sale Executor executing such short-bids. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Gupta to disclose ability to modify any existing auction properties so that when, and only when, the asking price is lowered, the Auction Editor will invoke the Sale Executor for all short-bids that become equal OR greater than the new lowered modified asking price, which results in the Sale Executor executing such short-bids because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 38 Gupta discloses auditing events for an auction. See audits, as in Col. 11, lines 10-25 and other references to history and audits. Gupta **does not** specifically disclose audits using the specific fields claimed (when it was created, when it ended, bid statistics, sales statistics, when it was modified and what was modified). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include any field, including when it was created, when it ended, bid statistics, sales statistics, when it was modified and what was modified, because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 39, Gupta discloses the use of auction history (see at least Col. 11, lines 15-20 concerning history). Gupta **does not** specifically disclose a user interface screen to review the information. As now admitted prior art, it was old and well known at the time of applicant's invention to review data, including auction history. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Gupta to include a user interface screen to review auction history. One of ordinary skill in the art at the time the invention was made would have been to extend Gupta to include a user interface screen to review auction history for the obvious reason that screens provide a way to access and information.

As per claim 40 Gupta discloses that electronic goods (e.g., advertisements) may be stored in a database, downloaded, and managed, and creating an auction for an electronic good wherein the electronic good is uploaded to this database. See at least Col. 10, line 60-Col. 11, line 29 concerning different types of databases.

As per claim 41 Gupta discloses keeping an audit trail on every purchasing bidder and seller transaction tracked by purchasing bidder and seller individually (Gupta, Col. 10, line 60-Col. 11, line 20). As per claim 41, Gupta **does not** specifically mention that purchasing bidders and sellers may also log their rating of the other party's execution of the transaction. Rating is admitted prior art, as in applicant's paragraph 0034. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Gupta and admitted prior art to disclose that purchasing bidders and sellers may also log their rating of the other party's execution of the

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transaction because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 42 Gupta discloses analysis of buyer and seller behavior. See, for example, at least Col. 11, lines 10-20. Gupta **does not** specifically disclose rating a seller, without human intervention, at the highest rating when the transaction is for an electronic good that was stored in the Electronic goods Database. This is admitted prior art, as in applicant's paragraph 0034. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Gupta and admitted prior art to disclose rating a seller, without human intervention, at the highest rating when the transaction is for an electronic good that was stored in the Electronic goods Database because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 43 Gupta discloses auditing every bid and sale. Col. 11, lines 8-24.

Claim 44 is rejected on the same grounds as claim 39.

As per claim 45 Gupta discloses providing review of all bids using different display filters and sorting criteria. See history and audits, as in Col. 10, lines 1-24. See also Col. 5, lines 38-47 and references to browsing through a set of items, and search facilities to help users located desired items. Gupta is reasonably capable of performing the claimed functions.

As per claim 46 Gupta discloses the ability to individually select and deselect purchasing bidders and then [to] accept the bids to execute a sale. See, for example, at least Col. 7, lines 1-40.

As per claim 47, Gupta discloses providing a display filter and sorter. See history and audits, as in Col. 10, lines 1-24. See also Col. 5, lines 38-47 and references to browsing through a set of items, and search facilities to help users located desired items. As per claim 47, Gupta **does not** specifically disclose providing display filter and sorter based on purchasing bidder history and their transaction ratings by others. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Gupta to disclose providing display filter and sorter based on purchasing bidder history and their transaction ratings by others because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 48 Gupta **does not** specifically disclose allowing purchasing bidders to offer their bid OR bids for a specific time interval, wherein offered bids during their specified time interval are considered active, and are considered inactive otherwise, wherein currently inactive bids that have already been active are considered expired.

However, the labels given to various actors and modules are not functionally related to the substrate of the article of manufacture. The labels themselves carry little or no patentable weight. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply a label to various actors and modules in a system such as Gupta because such data **does not** functionally relate to the substrate of the article of manufacture and merely labeling the data differently from that in the prior art would have been obvious. See *Gulack* cited above.

As per claim 49 Gupta discloses allowing purchasing bidders to customize bid prices. See, for example, references to acceptable price, as in Fig. 3B. As per claim 49, Gupta **does not** specifically disclose allowing purchasing bidders to customize what their specific bid price will be at specific times during the auction. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Gupta to disclose allowing purchasing bidders to customize what their specific bid price will be at specific times during the auction because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 50 Gupta discloses providing a review capability comprising browsing lists, as in history and audits, as in Col. 10, lines 1-24. See also Col. 5, lines 38-47 and references to browsing through a set of items, and search facilities to help users located desired items. As per claim 50, Gupta **does not** specifically disclose that the review capability includes lists such as a list of active bids with associated bid prices, times, and purchasing bidders only; a list of inactive bids with associated expired OR future bid prices, times, and purchasing bidders only; a single list of active bids and inactive bids with associated expired OR future bid prices, times, and purchasing

bidders. It would have been obvious to one of ordinary skill in the art at the time the invention was made to extend Gupta to disclose that the review capability includes lists such as a list of active bids with associated bid prices, times, and purchasing bidders only; a list of inactive bids with associated expired OR future bid prices, times, and purchasing bidders only; a single list of active bids and inactive bids with associated expired OR future bid prices, times, and purchasing bidders because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

As per claim 51 Gupta discloses providing lists as displays. See, for example, at also Col. 5, lines 38-47 and references to browsing through a set of items, and search facilities to help users located desired items. As per claim 51, Gupta **does not** specifically disclose that the displays provide a list of bids, bid quantity for each bid, and bid price for each bid, along with chart visualization. Gupta **does not** specifically disclose that the list is intended to facilitate an analysis of how much revenue will be made with the acceptance of specific bids. It would have been obvious to one of ordinary skill at the time the invention was made to extend Gupta to provide lists of bids, bid quantity for each bid, and bid price for each bid, along with chart visualization in order to facilitate an analysis of how much revenue will be made with the acceptance of specific bids, because the incorporation of such features is no more than the predictable use of prior art elements according to their established function.

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As per claim 52, Gupta discloses ability to individually select and deselect purchasing bidders and update the analysis. See, for example, at least Col. 10, lines 15-19.

Response to Arguments

Applicant's arguments filed 02/28/2008 have been fully considered.

Applicant's comments concerning claims 1-27 are moot in view of cancellation of those claims.

Applicant's arguments contain numerous errors. Some examples follow:

References to cancelled claims.

Applicant's arguments retain references to cancelled claims. However, Applicant has amended the dependency of claims such that the new claims do not correspond in scope to the cancelled claims. For example, Applicant states incorrectly that claim 50 corresponds to cancelled claim 23. Claim 50 includes all the limitations of claims 28, 25 and 27; Claim 23 included only limitations of claims 1 and 21.

The new claims recite different limitations from the old claims. For example:

old	new
2. The Short-Bidding Auction Manager of claim 1 further comprises an Email Notification Manager that sends out email to sellers and bidders when any salient events occur.	Claim 29 (new): The Short-Bidding Auction Manager of claim 28 further comprises an Email Notification Manager that sends out email to sellers and purchasing bidders when a sale is executed and to just a seller when a new bid has been offered.
4. The Short-Bidding Auction Manager of claim 1 further comprises an Auction Creator that allows sellers to list their auction on a specific good to last for a specific time interval.	Claim 31 (new): The Auction Creator of claim 28 further provides for sellers to create an auction on a specific good to last for a specific time interval.
6. The Short-Bidding Auction Manager of claim 1 further comprises an Auction Creator that allows sellers to list their auction on a specific good with an infinite quantity because the item is an	Claim 33 (new): The Auction Creator of claim 28 further provides for sellers to create an auction on a specific electronic good with an infinite quantity because the item becomes electronically downloadable for the

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electronic download.	purchasing bidder after a successfully executed sale.
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Grammar

Some sentences do not make sense. For example, page 28, last paragraph:

Based on the July 26, 2007 office action, the office will object newly introduced Claim 28 (former claim 1) noting that there **does not** appear to be correlation between what is being claimed in Claim 28 and repeated in the Abstract and paragraph 7.

Claimed limitations

Applicant identifies claims 35 and 40 as being directed to electronic good(s), pages 42-43. However, electronic good(s) are mentioned in claims 33, 35, 40 and 42.

As to definitions, Applicant argues,

The newly introduced Claims 28 - 52 (...) employ the label short-bid. Specifically, the office action notes that former Claims 1-25 contain the label short-bid and that it is not possible to identify the metes and bounds of the claims. The office action continues by noting that applicants' paragraph 1 defines Short-bid:

When a bid is less than the price posted, this is known as a "Short- Bid".

The office action continues by noting that by the applicants' definition, short-bids are found in descending auctions. Applicants respectfully request that the patent office recognize that while a Short-Bid was defined in the Applicants' application as being less than the price posted with no further clarification in the defining sentence, that this definition was provided in a very specific auction context also described in paragraph 1.

...

Applicants have defined active bids and inactive bids in their patent application detailed description's paragraph 27. The later half of the paragraph says:

Such embodiments recognize four distinct categories of bids:

- active bids (short-bids which are eligible for acceptance during their specified time interval),
- inactive expired bids (short-bids which were active but which are past their end time),
- inactive future bids (bids which will be active when the time reaches their start time), and
- successful bids (bids which have been accepted and have executed the corresponding sales transaction).

In response, the Examiner notes,

...Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir.

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1999) (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings."). Any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). See also MPEP § 2111.01.

During prosecution, claims are given their broadest reasonable interpretation:

USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In *re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily). In *re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also In *re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. MPEP 2106.

As to claim 28, Applicant argues,

The Applicants respectfully request that the patent office recognize that the Gupta patent maintains two important distinctions from the invention submitted by the Applicants. The first distinction has to do with which role of person initiates an auction and the second is the direction that bids go as the auction progresses. These distinctions are observed throughout the Gupta patent and also seen in several of the patent office references within the Gupta patent.

In response, the Examiner notes that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As per claims 35 and 40, applicant argues,

However, Applicants respectfully submit that the "paid" content such as advertising referred to in the reference falls more in the category of an electronic service. The text of Col. 11, lines 1-29 **does not** present an electronic goods database where the actual electronic good is stored for subsequent download. Instead the reference discusses a "Product DB" that comprises a catalog of information about real (non electronic) products.

In response, the Examiner notes that Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation and opinion that the claims

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define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

As to claim 36, Applicant argues,

Applicants' Claim 36 (...) is supported by Applicants' paragraph 22 in the detailed description....

Thus, Applicants' Claim 36 (former claim 9) intends to cover the case where the seller's asking price is modified up or down, and yet, no offer is accepted due to this modification. Applicants respectfully submit also that a comprehensive understanding of the detailed description allows for also modifying the current quantity of items being sold at auction as well as the end time of the auction...However, the intended theme of termination in the Applicants' invention is that the auction is terminated directly by the seller prematurely with no sale transaction or transactions consummating. Applicants believe this theme of premature termination with no sale or transaction is not present in the Gupta reference. This theme is supported in Applicants' detailed description paragraph [0023].

However, Claim 36, is directed to:

allows sellers to modify asking price **or** to terminate an auction.

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As to claims 39 and 44, applicant provides no traverse to official notice. Such notice is now admitted prior art. Applicant also argues

[...] does appear to disclose bid changes, however, the text seems to indicate that bids are always higher than the previous bid.

Applicants respectfully request that the patent office recognize that as per Applicants' patent application detailed description paragraph 27 and drawing in FIG. 3, that any bid price and quantity may be entered for a time interval including one that is lower than current highest bid or even lower than the previous bid submitted.

However, claim 44 **does not** mention ascending or descending bids:

... further comprises a user interface screen to review bid and/or sales history.

The Examiner notes that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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As to claim 41, applicant argues,

Applicants' **patent application** presented subsystem processing of a transaction rating on a downloadable electronic good sale because the electronic good may be downloaded immediately after electronic payment and the sale is completed. This is unlike sales transactions with real goods where the buyer must wait for the good to physically arrive in post office mail and rate not only timeliness of arrival but the condition of the good relative to what the seller advertised. With electronically downloadable goods, these issues are not present. Thus, delivery of the electronic good via download implies that the seller fulfilled all obligations as best as possible.

In response, there is no mention of what's implied in the claims. Further, there is no mention of a seller fulfilled "...all obligations as best [??] as possible." Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As to claims 45 and 47, applicant argues,

Applicants respectfully submit that there **does not** seem to be a mention of the use of a filter in the reference. Applicants would like to point out that the sorting criteria in Applicants' patent application Claim 45 (...) is intended to be a capability with multiple sorting options and/or even total custom filtering and sorting where sorting by bid price is only one sort option. Gupta discloses the sorted list as though it is a built in capability with no ability to sort by anything else. Gupta **does not** disclose filtering bid lists by any attributes. Applicants' patent application presents a filter based on a bid's active status (active or inactive) in paragraph 29 of the detailed description. Paragraph 34 presents a filter based on bidder or seller. Paragraph 27 presents a simple editbox for filtering and sorting expressions based on information fields of bids.

Applicants respectfully submit that the reference **does not** appear to present filtering and sorting based on bidder history or transaction ratings as in the Applicants' patent application Claim 47 (...). Gupta does disclose a notion of approved product distributors in Col. 10, line 12, but there appears to be no explicit mention that "approved" is equivalent to a filter based on history or transaction ratings. There is no discussion of assembling filters and sorting criteria as presented in the Applicants' patent application.

In response, please refer to Col. 5, lines 38-47 and references to browsing though a set of items, and search facilities to help users located desired items. Gupta is reasonably capable of performing the claimed functions.

Applicant presents no arguments concerning claim 50.

As to claim 51, applicant states

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However, there is no mention that this analysis is employed for sales revenue determination as emphasized in Applicants' Claim 51 (former claim 24).

There is no such limitation in claim 51, which reads:

Claim 51 (new): The Short-Bidding Auction Manager of claim 50 further comprises a Bid Analyzer that, with the Bid Reviewer, provides a list of bids, bid quantity for each bid, and bid price for each bid, along with chart visualization, in order to facilitate an analysis of how much revenue will be made with the acceptance of specific bids.

Further, there is no mention of sales revenue in the specification.

As to claim 52, applicant argues,

Applicants have defined active bids and *inactive bids* in their *patent application* detailed description's *paragraph 27*. The later half of the *paragraph* says:

Such embodiments recognize four distinct categories of bids:

- active bids (short-bids which are eligible for acceptance during their specified time interval),
- inactive expired bids (short-bids which were active but which are past their end time),
- inactive future bids (bids which will be active when the time reaches their start time), and
- successful bids (bids which have been accepted and have executed the corresponding sales transaction).

In response, the Examiner notes that these are not explicit definitions. Applicant refers to *inactive expired bids* (short-bids which were active but which are past their end time) and *inactive future bids*.

As to claims 29, 30, 33, 37, 39, 40, 42, 43, 44, 48, 51 and 52, applicant also relies on patentability of claim 28. In response, see rejection of claim 28.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES ZURITA whose telephone number is (571)272-6766. The examiner can normally be reached on 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571)272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JAMES ZURITA/
Primary Examiner
Art Unit 3625
5 July 2008